

February 22, 2001

Darryl E. Cook
Environmental Director, Development Management
James City County
P.O. Box 8784
Williamsburg, Virginia 23187-8784

Dear Mr. Cook:

This letter is in response to your January 18th letter regarding “Chesapeake Bay Preservation Ordinance and Agricultural Lands.” The questions you raise are intriguing and especially timely, given the rate at which traditional farms that produce grain, forage, fiber products, beef, poultry, and pork, are being replaced by more recreational uses, for profit or otherwise.

Ultimately, the locality has the responsibility for defining what constitutes an agricultural activity, and has been given discretion under the regulations to do so. Until such time as the Chesapeake Bay Local Assistance Board, in coordination with affected stakeholders, is able to clarify the issue, we believe that Tidewater localities have flexibility via zoning or policy changes to close the “loophole” to some degree. For example, James City County could reexamine its definition of agricultural activities within the Bay Ordinance, and clarify the intent of “...plant growth of any kind **in the open...**” Additionally, the County could begin implementation of an acreage threshold consistent with its local land use assessment code, Sec. 20-7.1, which states, via reference to state code, §58.1-3233, that “real estate devoted solely to agricultural or horticultural use consists of a minimum of five acres.” These are two possible avenues that may assist James City County in clarifying what constitutes an agricultural activity.

Nevertheless, below are two key points that should assist you in dealing with these situations:

- Irrespective of the intended future use, agricultural or non-agricultural, **any land disturbance** within a Chesapeake Bay Preservation Area (CBPA) that **occurs without prior local approval** via the SWCD Soil & Water Quality Conservation Plan approval process or the local Plan of Development Process, is in violation of the local program.

- The locality should place a higher priority on enforcement of its local program for such activities occurring within the Resource Protection Area (RPA). Therefore, upon discovering an ongoing land disturbing activity **within** a locally designated RPA whose owner claims the intended future use is agricultural, the locality is within its authority to:
 - Require that the land-disturbing activities **within the RPA** cease;
 - Prevent imminent water quality impacts by requiring **immediate** stabilization of mineral or bare soil and immediate remediation of existing threats to water quality;
 - Require proof of all wetland permits required by law; **and**
 - Require evidence that the activity meets the General Performance Criteria (9VAC10-20-120 et. seq.) Where the intended future use is agricultural, the General Performance Criteria include the development and /or submittal of a Soil & Water Quality Conservation Plan (SWQCP) that has been approved by the local SWCD Board of Directors. The SWQCP must include a description of the desired future agricultural activity. These plans need not be prepared by the SWCD, but must, however, meet CBLAD standards and be approved by the SWCD Board of Directors.

The Department appreciates your continued efforts to protect water quality. Should you have more questions, do not hesitate to contact us at (800) 243-7229.

Sincerely,

Ron Wood
Agricultural Program Manager

Doug Wetmore
Principal Planner

RVW/rvw

Cc: Michael D. Clower, Executive Director, CBLAD
C. Scott Crafton, Chief of Environmental Engineering, CBLAD
Martha H. Little, Chief of Environmental Planning, CBLAD
W. Brian Noyes, Conservation District Coordinator, Colonial SWCD